

United States Government

Department of Energy

memorandum

DATE: May 9, 2002

REPLY TO
ATTN OF: Office of Environmental Policy and Guidance: Boulos: 6-1306

SUBJECT: INFORMATION-RECENT CLEAN AIR ACT-RELATED FEDERAL REGISTER NOTICES:
March 2002 to April 2002

TO: Distribution

Attached for your information are summaries of the Clean Air Act-related Federal Register notices published by the Environmental Protection Agency in the period of March 2002 to April 2002. The purpose of these summaries is to make the Departmental complex aware of information that may be of relevance to its operations. If you have any questions concerning these notices, please contact Mr. Emile Boulos of my staff at: emile.boulos@eh.doe.gov; 202-586-1306.



Andrew Wallo III
Director
Air, Water and Radiation Division

Attachment

ATTACHMENT

SUMMARY OF CLEAN AIR ACT- RELATED FEDERAL REGISTER (FR) NOTICES PUBLISHED DURING THE PERIOD OF MARCH 2002 TO APRIL 2002

1. **FINAL RULE; TECHNICAL AMENDMENT: 40 CFR PART 81: "DESIGNATION OF AREA FOR AIR QUALITY PLANNING PURPOSES; OHIO; TECHNICAL AMENDMENT," (67 FR 11041; MARCH 12, 2002).**

On March 12, 2002, the Environmental Protection Agency (EPA) issued a final rule in the Federal Register (67 FR 11041) amending 40 CFR Part 81, Section 81.336, to designate the Ohio portion of the Cincinnati-Hamilton area (including the Ohio Counties of Hamilton, Butler, Clermont, and Warren and the Kentucky Counties of Boone, Campbell, and Kenton) as nonattainment for ozone, with a classification of "moderate nonattainment". EPA is making this amendment in response to the September 11, 2001, Court decision in *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001) which vacated EPA's June 19, 2000, (65 FR 37879) redesignation of the Cincinnati-Hamilton area to attainment and remanded to EPA for further proceedings consistent with the Court's opinion. The technical amendment is effective on April 11, 2002. (The Fernald Environmental Management Project is in this nonattainment area.)

2. **DIRECT FINAL RULE, CORRECTION: 40 CFR PART 82, " PROTECTION OF STRATOSPHERIC OZONE: REMOVAL OF RESTRICTIONS ON CERTAIN FIRE SUPPRESSION SUBSTITUTES FOR OZONE-DEPLETING SUBSTANCES; AND LISTING OF SUBSTITUTES; CORRECTION," (67 FR 12874; MARCH 20, 2002).**

On March 20, 2002, EPA issued a direct final rule in the Federal Register (67 FR 12874) to identify and correct typographical errors in chemical formulas that were made inadvertently in the January 29, 2002, Federal Register (66 FR 4185), direct final rule related to the Significant New Alternatives Policy (SNAP) program. These corrections are effective on April 1, 2002.

3. **NOTICE OF AVAILABILITY: "RECENT POSTING TO THE APPLICABILITY DETERMINATION INDEX (ADI) DATA BASE SYSTEM OF AGENCY APPLICABILITY DETERMINATIONS, ALTERNATIVE MONITORING DECISIONS, AND REGULATORY INTERPRETATIONS PERTAINING TO STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES AND NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS," (67 FR 14936; March 28, 2002).**

On March 28, 2002, EPA published a notice of availability in the Federal Register (67 FR 14936) announcing the availability of applicability determinations, alternative monitoring decisions, and regulatory interpretations that EPA has made under the New Source Performance Standards (NSPS) (40 CFR Part 60), and the National Emission

Standards for Hazardous Air Pollutants (NESHAP) (40 CFR Parts 61 and 63). An electronic copy of each complete document posted on the Applicability Determination Index (ADI) database system is available on the Internet through the ADI at <http://cfpub.epa.gov/adi>.

The General Provisions to the NSPS in 40 CFR Part 60 and the NESHAP in 40 CFR Parts 61 and 63 provide that a source owner or operator may request a determination of whether certain intended actions constitute the commencement of construction, reconstruction, or modification. EPA's written responses to these inquiries are broadly termed "applicability determinations" (40 CFR 60.5 and 61.06). The NSPS and NESHAP also allow sources to seek permission to use monitoring or recordkeeping which is different from the promulgated requirements [40 CFR 60.13(i), 61.14(g), 63.8(b)(1), 63.8(f), and 63.10(f)]. EPA's written responses to these inquiries are broadly termed "alternative monitoring decisions". Further, EPA responds to written inquiries about the broad range of NSPS and NESHAP regulatory requirements as they pertain to a whole source category. These inquiries may pertain, for example, to the type of sources to which the regulation applies, or to the testing, monitoring, recordkeeping or reporting requirements contained in the regulation. EPA's written responses to these inquiries are broadly termed "regulatory interpretations".

EPA currently compiles EPA-issued NSPS and NESHAP applicability determinations, alternative monitoring decisions, and regulatory interpretations, and posts them on the Applicability Determination Index (ADI) on a quarterly basis. The last update was made on March 14, 2002, and the next update is scheduled to take place by June 30, 2002.

The ADI is an electronic index on the Internet with over one thousand EPA letters and memoranda pertaining to the applicability, monitoring, recordkeeping, and reporting requirements of the NSPS and NESHAP. The letters and memoranda may be searched by date, office of issuance, subpart, citation, control number or by string word searches.

The March 28, 2002, notice comprises a summary of 30 of such documents added to the ADI on January 22, 2002. The subject, author, recipient, and date (header) of each letter and memorandum is listed in this notice, as well as a brief abstract of the letter or memorandum. This notice provides a table that identifies the database control number for each document posted on the ADI database system on January 22, 2002; the applicable category; the Subpart(s) of 40 CFR Part 60, 61, or 63 (as applicable) covered by the document; and the title of the document, which provides a brief description of the subject matter.

**4. NOTICE OF DESIGNATION OF REFERENCE AND EQUIVALENT METHODS:
"AMBIENT AIR MONITORING REFERENCE AND EQUIVALENT METHODS:
DESIGNATION OF ONE NEW REFERENCE METHOD FOR PM₁₀, FOUR NEW
EQUIVALENT METHODS FOR PM_{2.5}, AND ONE NEW REFERENCE METHOD FOR
NO₂," (67 FR 15566; APRIL 2, 2002).**

On April 2, 2002, EPA published a notice in the Federal Register (67 FR 15566) announcing: (i) the designation of one new reference method for measuring concentrations of particulate matter with a diameter less than 10 microns (PM₁₀) in ambient air; (ii) four new equivalent methods for measuring concentrations of particulate matter with a diameter less than 2.5 microns (PM_{2.5}) in ambient air; and (iii) one new reference method for measuring concentrations of Nitrogen Dioxide (NO₂) in ambient air.

These designations are made under the provisions of 40 CFR Part 53, as amended on July 18, 1997 (62 FR 38764). In accordance with regulations at 40 CFR Part 53, the EPA examines various methods for monitoring the concentrations of those ambient air pollutants for which EPA has established National Ambient Air Quality Standards (NAAQSs), as set forth in 40 CFR Part 50. Monitoring methods that are determined to meet specific requirements for adequacy are designated by the EPA as either reference methods or equivalent methods (as applicable), thereby permitting their use under 40 CFR Part 58 by States and other agencies for determining attainment of the NAAQSs.

The new reference method for PM₁₀ is a manual method that is based on a particular, commercially available high volume **PM₁₀** sampler, as specified in appendixes J and M of 40 CFR Part 50. The newly designated reference method is identified as: RFPS-0202-141, "Tisch Environmental Model TE-6070 PM₁₀ High-Volume Air Sampler". The four new equivalent methods for PM_{2.5} are manual monitoring methods that are based on particular, commercially available **PM_{2.5}** samplers. The methods are identified as Class II equivalent methods, which means that they are based on an integrated, filtered air sample with gravimetric analysis, but deviate significantly from the specifications for reference methods set forth in appendix L of 40 CFR Part 50. The newly designated Class II equivalent methods are identified as: EQPM-0202-142, "BGI Incorporated Models PQ200-VSCC or PQ200A-VSCC PM_{2.5} Ambient Fine Particle Sampler". The new reference method for **NO₂** is an automated method (analyzer) which utilizes the measurement principle (gas phase chemiluminescence) and calibration procedure specified in appendix F of 40 CFR Part 50. The newly designated reference method is identified as: RFNA-0202-146, "Environment S. A. Model AC32M Chemiluminescent Nitrogen Oxides Analyzer".

5. FINAL RULE: 40 CFR PARTS 52 AND 81, "APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS AND DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES; STATE OF NEW YORK," (67 FR 19337; APRIL 19, 2002).

On April 19, 2002, EPA published a final rule in the Federal Register (67 FR 19337) approving: (1) New York State Department of Environmental Conservation (NYSDEC) request of November 23, 1999, to redesignate the New York portion of the New York-Northern New Jersey-Long Island Carbon Monoxide (CO) nonattainment area from nonattainment to attainment of the National Ambient Quality Standard (NAAQS) for CO. (The Environmental Measurements Laboratory is in this affected area.); (2) New York's CO maintenance plan because it provides for continued attainment of the CO NAAQS; (3) New York CO attainment demonstration that was submitted by NYSDEC on November 15, 1992; and (4) New York State Implementation Plan (SIP) for CO.

In a related matter, EPA is approving New York's March 22, 2000, submittal of the Downtown Brooklyn Master Plan component of the CO attainment demonstration. Finally, EPA is using the April 19, 2002, final rule as an opportunity to establish a Carbon Monoxide section in the Code of Federal Regulations (CFR) Subpart for the New York SIP. This is an administrative change designed to make the CFR clearer to the reader.

6. NOTICE: "GUIDANCE ON THE CERCLA SECTION 101(10)(H) FEDERALLY PERMITTED RELEASE DEFINITION FOR CLEAN AIR ACT "GRANDFATHERED " SOURCES," (67 FR 19750; APRIL 23, 2002).

On April 23, 2002, EPA published a guidance in the Federal Register (67 FR 19750) as an appendix to this notice on the CERCLA section 101(10)(H) federally permitted release definition as it applies to grandfathered sources under the Clean Air Act (CAA). The guidance is discussing the application of the federally permitted release exemption to air emissions from sources that are "grandfathered" (i.e., certain requirements of the New Source Performance Standards Program apply specifically to new sources, exempted existing sources are known as "grandfathered" sources under Title I of the CAA).

Under the CAA the federally permitted release exemption pertains to the reporting requirements under two federal emergency response and public right to know laws: Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C.9603, and Section 304 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. 11004. Federally permitted releases are defined in CERCLA Section 101(10), which specifically identifies certain releases that are permitted or controlled under several environmental statutes. These releases are exempt from the notification requirements of CERCLA Section 103 and EPCRA Section 304. CERCLA Section 101(10)(H) identifies releases that are exempt from reporting because they are subject to permits and regulations under the CAA.

On April 17, 2002, the Agency published the "Guidance on the CERCLA Section 101(10)(H) Federally Permitted Release Definition for Certain Air Emissions," (67 FR 18899). The Guidance, however, did not address the grandfathered sources and federally permitted releases. The April 23, 2002 notice reflects (i) EPA consideration of the comments submitted on the Interim Guidance regarding that issue, (ii) general concerns raised by previous Federal Register notices on the definition of federally permitted release, and (iii) EPA experience in implementing the reporting requirements under CERCLA Section 103 and EPCRA Section 304.

7. PROPOSED RULE; EXTENSION OF COMMENT PERIOD AND NOTICE OF PUBLIC HEARING: "NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS (NESHAP): MISCELLANEOUS ORGANIC CHEMICAL MANUFACTURING AND MISCELLANEOUS COATING MANUFACTURING," (67 FR 21612; MAY 1, 2002)

The EPA announced in the proposed rule a new date for a public hearing to take comments on the Agency's proposed rule for national emission standards for hazardous air pollutants (NESHAP): Miscellaneous Organic Chemical Manufacturing and Miscellaneous Coating Manufacturing, published on April 4, 2002. The comment period is extended from June 3, 2002, to June 28, 2002. The Public Hearing is scheduled for May 23, 2002.

On April 23, 2002, the Office of Policy and Guidance (EH-41) distributed a memorandum to solicit comments from Department of Energy (DOE) program offices and field organizations on the Environmental Protection Agency's (EPA's) notice of proposed rulemaking, "National Emission Standards for Hazardous Air Pollutants (NESHAP): Miscellaneous Organic Chemical Manufacturing and Miscellaneous Coating

Manufacturing.” The proposed rule (67 FR 16153; April 4, 2002) is available at the Office of Environmental Policy and Guidance (EH-41) Home Page at: <http://www.eh.doe.gov/oepa/rules/67/67fr16153.pdf>.

The Miscellaneous Coating Manufacturing source category includes many previously unregulated organic chemical processing units at major sources. The Miscellaneous Coating Manufacturing source category includes the manufacture of a number of coatings, including paints, inks, and adhesives.

Operations that are located at or are a part of a major source of hazardous air pollutants (HAPs) would be subject to these proposed regulations. Applicability provisions for Subpart FFFF are found at §63.2435 and §63.2440 of the proposed rule, and proposed emission limits are provided in Tables 1 through 8. We have learned from Department of Defense (DoD) staff that Subpart FFFF potentially may apply to DoD explosives and propellant manufacturing processes, but Subpart HHHHH and the rest of Subpart FFFF probably do not apply to other military operations. Department-wide HAP information collected by EH-41 in the early 1990s indicated that several DOE sites were engaged in explosives manufacturing at that time. Applicability provisions for Subpart HHHHH are found at §63.7985 and §63.7990 of the proposed rule, and proposed emission limits are provided in Tables 1 through 7.

The proposed emission standards would apply to: process vents, storage tanks, equipment leaks, transfer operations, wastewater systems, and associated ancillary equipment such as heat exchange systems. Existing affected sources will have three years to comply after these rules are finalized.